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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
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8 JAN E. KRUSKA,

9 Plaintiff,

10 v.

11 PERVERTED JUSTICE
12 FOUNDATION INCORPORATED, et.
13 al.,

14 Defendant.

No. CV 08-0054-PHX-SMM

ORDER

15 Before the Court is Plaintiff's Motion for Recusal of the Honorable Stephen M.
16 McNamee (Doc. 151). Plaintiff requests recusal pursuant to 28 U.S.C. § 455, and asks
17 that the case be transferred to another judge in the District of Arizona. Plaintiff bases her
18 recusal motion on the "extrajudicial activism" of Judge McNamee, "exemplified by
19 various prestigious awards, his role as a former United States prosecutor coupled with
20 questionable conduct and lack of judicial diligence" in the present case.

21 28 U.S.C. § 455(a) states that "[a]ny justice, judge, or magistrate of the United
22 States shall disqualify himself in any proceeding in which his impartiality might
23 reasonably be questioned." 28 U.S.C. § 455(a). Section 455 imposes an affirmative duty
24 upon judges to recuse themselves when "a reasonable person with knowledge of all the
25 facts would conclude that the judge's impartiality might reasonably be questioned."
26 Yagman v. Republic Ins., 987 F.2d 622,626 (9th Cir. 1993) (quoting In re Yagman, 796
27 F.2d 1165, 1179 (9th Cir. 1986). Recusal is required "only if the bias or prejudice stems
28 from an extrajudicial source and not from conduct or rulings made during the course of

1 the proceeding.” Pau v. Yosemite Park and Curry Co., 928 F.2d 880, 885 (9th Cir. 1991)
 2 (quoting Toth v. TransWorld Airlines, 862 F.2d 1381, 1388 (9th Cir. 1988).

3 In the present case, recusal is not warranted. First, the fact that Judge McNamee
 4 has been honored with awards is not indicative of a lack of impartiality that would require
 5 recusal. Second, Judge McNamee’s former role as a government prosecutor is not a
 6 reason for recusal. 28 U.S.C. § 455(b)(3) directs a judge to disqualify himself “[w]here
 7 he has served in governmental employment and in such capacity participated as counsel,
 8 adviser, or material witness concerning the proceeding or expressed an opinion
 9 concerning the merits of the particular case in controversy.” 28 U.S.C. § 455(b)(3).
 10 Judge McNamee was the United States Attorney for the District of Arizona from 1985-
 11 1990. Plaintiff’s case was not filed until January 2008, and thus, Judge McNamee never
 12 participated in this case in any capacity, either as counsel, advisor, or witness.

13 Third, Plaintiff cites “questionable conduct” of Judge McNamee as a reason for
 14 recusal, but offers no specific facts to support this assertion. Finally, Plaintiff raises a
 15 lack of judicial diligence in her recusal motion. This is not a proper basis for recusal
 16 under 28 U.S.C. § 455. Indeed, since Plaintiff’s complaint was filed in January 2008,
 17 barely over a year ago, there have been 155 docket entries, many of them attributable to
 18 Plaintiff. The Court has devoted significant time and resources to resolving Plaintiff’s
 19 motions, often to the exclusion of other cases on its docket.

20 Accordingly,

21 **IT IS HEREBY ORDERED DENYING** Plaintiff’s Motion for Recusal of the
 22 Honorable Stephen M. McNamee (Doc. 151).

23 DATED this 4th day of March, 2009.

24
 25 
 26 Stephen M. McNamee
 27 United States District Judge
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